



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0012]

Hours of Service of Drivers: Application for Exemption; American Trucking Associations, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that the American Trucking Associations, Inc. (ATA) has applied for an exemption from the Federal hours-of-service (HOS) regulations that prohibit commercial motor vehicle (CMV) drivers from driving a CMV if more than 8 consecutive hours have passed since the driver's last off-duty or sleeper-berth period of 30 minutes or more. ATA is requesting the exemption on behalf of all motor carriers that transport hazardous materials (HM) shipments requiring security plans under regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA). These plans normally require a driver to "attend" such cargo while the CMV is stopped, which would be an on-duty activity. This forces drivers to choose between FMCSA's off-duty rest break requirement and compliance with PHMSA's security plans, many of include an on-duty "attendance" requirement. ATA proposes that drivers transporting HM for motor carriers required to file security plans be allowed to count their on-duty "attendance" time for any HM cargo toward the required 30-minute rest break requirement, provided the

drivers perform no other on-duty activity. The exemption would thus resemble Section 397.7, which requires drivers transporting certain explosives constantly to “attend” their load, while Section 395.1(q) allows them to count “attendance” time toward their rest break. FMCSA requests public comments on the request for exemption.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2015-0012 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov at any time and in the box labeled “SEARCH for” enter FMCSA-2015-0012 and click on the tab labeled “SEARCH.”

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477; Email: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application,

including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Under 49 CFR 172.800-804, administered by PHMSA, carriers of certain security-sensitive HM must develop special plans that account for personnel, cargo, and en route security. Although not mandatory, “constant attendance” of the cargo is included by most carriers in their security plans.

“Constant attendance” on a CMV is considered “on duty time,” as defined in 49 CFR 395.2. However, CMV drivers are subject to rest break requirements in Section 395.3(a)(3)(ii), which prohibit them from driving a CMV if more than 8 consecutive hours have passed since the driver’s last off-duty or sleeper-berth period of 30 minutes or more. Drivers who are required by their carrier’s HM security plan to maintain constant on-duty attendance on the CMV whenever stopped, cannot also comply with the off-duty rest break requirement of Section 395.3(a)(3)(ii).

Section 397.5 requires drivers transporting cargo classified as Division 1.1, 1.2, or 1.3 (explosive) materials to attend the cargo at all times. There is no regulatory conflict for these drivers, however, because Section 395.1(q) specifically allows them to count up to 30 minutes of their on-duty attendance time toward the rest break requirement, provided that they perform no other on-duty activities during that period.

ATA initially asked FMCSA “to clarify that drivers can exercise constant attendance over a vehicle without having to remain on duty.” After discussion with Agency officials, however, ATA agreed that its request should be treated as an exemption application. All correspondence on this issue has been placed in the docket listed at the beginning of this notice. The exemption request has been filed on behalf of all carriers whose drivers transport HM loads requiring placarding under 49 CFR part 172, subpart F, or select agents and toxins identified in Section 172.800(b)(13) that do not require placarding, and who have filed security plans requiring constant attendance of HM in accordance with Sections 172.800-804. The HM load being transported would not itself have to come under the provisions of Sections 172.800-804, because it would be too difficult for drivers and enforcement officials to determine at roadside whether Sections 182.800-804 applied to any individual load. Only drivers operating under the authority of carriers that have filed security plans under Sections 172.800-804 and who are transporting loads that require placarding or contain a select agent or toxin identified in Section 172.800(b)(13) would be eligible for this exemption. Drivers operating under this exemption could count up to 30 minutes of their on-duty attendance time toward a required rest break, provided that they perform no other on-duty activities during the rest-break period.

The driver would be required to annotate the record of duty status (“log book”) to show the time claimed as a rest break was on-duty time because he/she was required to follow the carrier’s security plan, which in turn required “attendance” on an HM load.

It should be noted that a carrier or driver would have no reason to claim to be operating under this exemption unless it was necessary to do so to avoid a regulatory conflict. While under the exemption, if granted, the driver’s rest-break time would be on-duty and count against the 60 or 70-hour on-duty limit. A rest break taken without using this exemption would be off-duty and not be included in the 60/70 hour limit.

ATA contends that allowing these drivers to count up to 30 minutes of their attendance time toward a required rest break, provided they perform no other on-duty activities during the break, would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation because the attendance duty would be unlikely to contribute to driver fatigue. ATA further contends that allowing these drivers to count up to 30 minutes of their attendance time toward a required rest break would provide security benefits superior to the current practices.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on ATA’s application for an exemption from the rest-break requirements of Section 395.3(a)(3)(ii). The Agency will consider all comments received by close of business on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. To the extent practicable, the Agency will consider comments received in the public docket after the closing date of the comment period.

Issued on: April 22, 2015.

Larry W. Minor,
Associate Administrator for Policy.

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